Where a party requires the right of appeal, time begins to run under O 57 r 4 for filing the notice of appeal, ie either when he is informed of the judge's certification that he does not wish to hear further argument: see *Bank of America NT & SA* v *Chai Yen*[4] (a Malaysian decision on a similar provision), or, where there is rehearing, from the date of the order made on the rehearing. If the party fails to file his notice of appeal in compliance with O 57 r 4, he may apply to the Court of Appeal, but not to the court below, for extension of time under O 57 r 17.

Under s 34(2), the aggrieved party need not request further argument. He has the option of applying for leave from the judge or the Court of Appeal. By virtue of s 35 of Cap 322, he must first apply to the judge who heard the application. A further application may be made to the Court of Appeal under O 57 r 16(3). What is not provided is the period within which he must apply for leave.

Our disposition of these two appeals is as follows: (1) the appeal in CA No 76 of 1989 is dismissed with costs, and, in consequence (2) we make no order in CA No 18 of 1989, with no order as to costs, each having succeeded on one of the two main issues in this appeal.

Order accordingly.

Solicitors: *Godwin & Co; Murphy & Dunbar.*

Reported by *Zarinah Marican*

Ng Swee Hong v Singmarine Shipyard Pte Ltd

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 30 OF 1985
YONG PUNG HOW CJ, LAI KEW CHAI AND THEAN JJ
1 JUNE 1991

Civil Procedure — Writ, service of — Substituted service — Defendant out of jurisdiction — Effect of substituted service

The respondents (plaintiffs) began an action against the appellant as guarantor for the payment of repair bills. The appellant had left Singapore before the writ and statement of claim were filed. Attempts were then made to serve the writ on the appellant which were unsuccessful. The respondents' solicitors were later informed that the appellant had left Singapore. On application by the respondents, an order for substituted service was made whereby service was to be effected, inter alia, by posting a copy of the writ together with a copy of the order at No 66 Chun Tin Road, which was the appellant's home address in Singapore. The appellant then entered conditional appearance through his solicitors. An application was made for the service of the writ to be set aside which was dismissed. The appellant appealed.

Held, dismissing the appeal:

(1) Under O 62 r 5, where it is impractical for any reason to serve a document personally on a person, the court may order substituted service of that document. Substituted service is then effected by taking such steps as the court may direct to bring the document to the notice of the person to be served.

(2) In considering the question of whether the order for substituted service in this case was adequate to bring the writ and statement of claim to the notice of the appellant, there is the affidavit of the respondents' solicitors which show that the appellant had solicitors acting for him, and that they were in a position to state that the time of the appellant's return was not known. It is also clear from the affidavit and evidence of the appellant's son that the appellant was in contact with his family and that the writ and statement of claim served at No 66 Chun Tin Road were brought to the appellant's notice. The requirement of O 62 r 5 has thus been satisfied.

Cases referred to

1 *Fry* v *Moore* (1889) 23 QBD 395 (refd)
2 *Field* v *Bennett* (1886) 56 LJQB 89 (refd)
3 *Myerson* v *Martin* [1979] 3 All ER 667 (refd)

Legislation referred to

Rules of the Supreme Court 1970 O 62 r 5

Tang Liang Hong for the appellant.
Thomas Tan Boon Yong for the respondents.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): The issue in this appeal is the effect of substituted service when the defendant was out of the jurisdiction at the time the writ was issued. The facts material to this appeal are as follows.

The respondents who were the plaintiffs are shipbuilders and shiprepairers. Repairs were executed by

the respondents to the vessel 'Jessie I' between January and May 1984 and a sum of $1m was due to them from the owners. Guarantees were given on 12 July 1984 by the first and second defendants in consideration of the respondents agreeing to payment by instalments. The owners failed to make payment of the second instalment due on 13 September 1984. On 22 September 1984, the appellant who was the second defendant left Singapore. On 4 October 1984, the writ and statement of claim were filed. On 10 October 1984, the writ was served on the first defendant. Between 9 October 1984 and 14 October 1984, attempts were made to serve the writ and statement of claim on the appellant. On 12 October 1984, the solicitors for the appellant and the first defendants informed the respondents that the appellant had left Singapore. On 16 November 1984, on an application by the respondents, it was ordered that the service of the writ be effected on the appellant by posting a copy of the writ together with a copy of the order at No 66 Chun Tin Road, Singapore 2159 and by posting copies thereof on the notice board of the High Court. On 3 December 1984, the appellant through his solicitors entered conditional appearance. On 19 January 1984, the appellant applied for the service of the writ to be set aside. The appellant's application was heard on 29 March 1985. After hearing the evidence of Ng Joo Siang, the son of the appellant, the learned judge dismissed the appellant's application with costs. It was against this decision of the learned judge that the appeal was brought.

At the hearing of the appeal, counsel for the appellant referred us to several English authorities including *Fry* v *Moore*[1] and *Field* v *Bennett*.[2] Counsel submitted that, as the appellant was out of the jurisdiction at the time of issue of the writ, substituted service could not be ordered against him unless it could be shown that he was evading service, and there was no evidence on which the court could come to this conclusion. Although the appellant was a frequent traveller, his travels were not an indication that he was evading service. The learned judge had erred in not dealing with the entries in his passport. Counsel also referred us to the case of *Myerson* v *Martin*[3] in support of his argument. The question is whether, on the facts, substituted service was properly ordered. For this, O 62 r 5 provides as follows:

> (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order in Form 135 for substituted service of that document.
>
> (2) An application for an order for substituted service must be made by summons supported by an affidavit in Form 136 stating the facts on which the application is founded.
>
> (3) Substituted service of a document, in relation to which an order is made under this Rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

It is obvious from O 62 r 5 that where it is impractical for any reason to serve a document personally on a person, the court may order substituted service of that document. Substituted service is then effected by taking such steps as the court may direct to bring the document to the notice of the person to be served.

In considering the question of whether the order for substituted service in this case was adequate to bring the writ and statement of claim to the notice of the appellant, there is the affidavit of the respondents' solicitors dated 5 November 1984, an extract of which is reproduced below:

> 3 On 12 October 1984, the plaintiffs' solicitors received a telex from Messrs Tang & Company, solicitors for the first and second defendants which observes that attempts were being made to effect personal service on the second defendant. In the said telex, Messrs Tang & Company stated that they have been informed by their client's family members that the said attempts were made and that their client has left Singapore on a business trip. The plaintiffs' solicitors replied on the 16 October 1984 enquiring when the second defendant will be returning to Singapore. In reply to the said letter dated 16 October 1984 Messrs Tang & Company have stated in their letter to the plaintiffs' solicitors dated 17 October 1984 that *they are not aware when their client will return to Singapore* (our emphasis) and that according to members of their client's family it is usual for him to remain away from Singapore for considerable length of time ...

From this affidavit, it is clear that the appellant already had solicitors acting for him, and that they were in a position to state that the time of the appellant's return was not known.

Then there is the affidavit of the appellant's son Ng Joo Siang and his evidence in court. In his affidavit dated 21 March 1985, he said:

> 5 I wish to inform this honourable court that since 26 September 1984, the second defendant has been away from Singapore and *still continues to travel to various countries for business and other purposes.* ... (Our emphasis.)
>
> 6 The second defendant had *left Singapore for his hometown in Malaysia and thereafter departed from Malaysia on 28 September 1984 and has been away ever since* ... (our emphasis). He has since been continuously travelling through Japan, Hong Kong, Karachi, Bangkok, Taiwan and the United States of America amongst others ...

In an exhibit to this affidavit, the solicitors for the appellant told the solicitors for the respondents that they had no instruction to accept service.

Ng Joo Siang also gave the following evidence before the learned judge:

> The second defendant is my father. I made affidavit on 21 March in support of application. Second defendant is a

general merchant. He travels a lot. *I received instructions by telephone to ask lawyers to apply to set aside service. He calls me once or twice a week to instruct me on business matters* (our emphasis).

Singapore is only a 'station' for him. His travels at times last six months. He is here only for two weeks or so and then he is off. He is a citizen of Malaysia. He left Singapore 26 September 1984. He has not come back since. If he had come back, I could have seen him.

He sent me photocopies of his passport (our emphasis). He has many passports. I know he had a restricted Malaysia/Singapore restricted passport. I do not know when he will come back.

In cross examination, he said:

My father's *last phone call was from Argentina. His Singapore address is 66 Chun Tin Road. My home as well* (our emphasis). I do not think he has left Singapore for good. Neither to avoid creditors. He has interest in many Singapore companies.

Not out of Singapore to avoid creditors. He is concerned in first defendants, now under winding-up. No other companies of his in winding-up proceedings. When in Singapore, he does business as a general merchant. *Whole family resides at 66 Chun Tin Road* (our emphasis).

[To Court: Yes, there are two telephones listed in directory in my father's name at 66 Chun Tin Road.

I do not know how my father knew of writ.]

Witness volunteers: *My mother picked up summons and she told him in telephone conversation* (our emphasis).

From the affidavits and the evidence of the appellant's son, it is clear that the appellant travels extensively. No process server would be able to catch up with him. It is also clear that he is in contact with his family. He is able to send them photocopies of his passport. He has called from Argentina. It is also clear to us that the writ and statement of claim served at No 66 Chun Tin Road were brought to the appellant's notice. The requirement of O 62 r 5 being satisfied, we therefore dismissed the appeal.

Appeal dismissed.

Solicitors: *Tang & Co; Haridass Ho & Partners.*

Reported by *Zarinah Marican*

Chen Chien Wen Edwin v Pearson

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 9 OF 1991
CHAO HICK TIN J
25 FEBRUARY 1991

Civil Procedure — Powers of High Court — Manner of exercising powers — Effect of Rules of the Supreme Court 1970

Civil Procedure — Appeal — Notice of appeal — Filing of extension of time — Jurisdiction

The respondent wished to appeal against certain orders granted on 26 November 1990 by the court to the petitioner on matters relating to custody and other ancillary matters. However she failed to file and lodge the notice of appeal within time. This originating motion was taken for an order that the time for filing the notice of appeal be extended.

The petitioner objected on the preliminary point that the High Court had no jurisdiction to hear this application and that it should be made to the Court of Appeal.

Held, allowing the preliminary objection:

(1) The power of the High Court to extend time must be exercised in accordance with the Rules of the Supreme Court 1970. Order 3 r 5 merely sets out the powers generally without specifying what applications should be made to the High Court or to the Court of Appeal.

(2) Order 57 r 17 implies that any application for extending time for serving notice may only be done by the Court of Appeal, unless it falls within one of the exceptions.

(3) If the application for extension of time to file and serve a notice which is made before the expiry of the prescribed time limit, the court of first instance would have the jurisdiction to entertain that application.

(4) The defect here touches on jurisdiction and cannot be disregarded.

Cases referred to

1 *Karno* v *Spratt* [1909] WN 251 (refd)
2 *Austin Reed Ltd* v *Royal Insurance Co Ltd* [1956] 1 WLR 765; [1956] 2 All ER 509 (folld)
3 *Lee Lee Cheng* v *Seow Peng Kwang* [1960] MLJ 1 (distd)
4 *R* v *Bloomsbury & Marylebone County Court* [1976] 1 All ER 897 (distd)

Legislation referred to

Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 18(2)(h), (3)
Rules of the Supreme Court 1970 O 3 rr 3, 5, O 57 rr 4, 17

Sim Mei Ling for the applicant.
KS Rajah for the respondent.

Cur Adv Vult

Chao Hick Tin J: This originating motion is brought by the respondent in Divorce Petition No 1789 of 1989 seeking an order that the respondent's time for appealing against the order of the learned judicial commissioner made on 26 November 1990 relating to custody and other ancillary matters in the divorce proceedings be extended pursuant to the powers conferred upon the